

ISSUE DATE: October 25, 1999

DOCKET NO. P-3009, 3052, 5096,421, 3017/PA-99-1192

ORDER GRANTING PETITIONS TO INTERVENE, DENYING OTHERS, AND
GRANTING PARTICIPANT STATUS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
Joel Jacobs
Marshall Johnson
LeRoy Koppendrayer
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Merger of the Parent
Corporations of Qwest Communications
Corporation LCI International Telecom Corp.
USLD Communications, Inc. Phoenix
Network, Inc. and U S West Communications,
Inc.

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PROCEDURAL HISTORY

On August 19, 1999, Qwest Communications Corporation, LCI International Telecom Corp., USLD Communications, Inc., and Phoenix Network, Inc., on behalf of their ultimate parent corporation Qwest Communications International Inc. (Qwest) and U S West Communications Inc. (USWC), filed a joint application seeking an order of the Commission approving the proposed merger of Qwest and USWC to the extent such approval is necessary and legally appropriate under Minn. Stat. § § 237.23 and 237.74 subd. 12.

On September 7, 1999 the Commission held a docket management conference. At the docket management conference, the Commission established the following procedural schedule:

September 28, 1999	Petitions to Intervene Due
October 5, 1999	Replies to Petitions to Intervene Due
October 12, 1999	Commission Hearing on Petitions to Intervene
November 19, 1999	Initial Comments Due
December 3, 1999	Reply Comments Due
January 4, 2000	Commission Hearing

On September 20, 1999, the Telecommunications Resellers Association (TRA) filed a petition to intervene.

On September 23, 1999, Northwestern Bell/U S West Retiree Association (Association) filed a petition to intervene.

On September 28, 1999, AT&T Communications of the Midwest (AT&T), Rhythms Links Inc. (Rhythms), Covad Communications (Covad), and Cady Telemanagement, Inc. (Cady) filed petitions to intervene.

On September 29, 1999, McLeodUSA (McLeod) filed a petition to intervene.

On October 5, 1999, USWC filed its response to the petitions to intervene.

The Commission met on October 12, 1999 to consider this matter. In the course of the hearing the following parties modified their intervention requests by voluntarily waiving any right they may have as an intervener to request a contested case hearing in this matter: AT&T, Rhythms, Covad, and McLeod.

FINDINGS AND CONCLUSIONS

I. LEGAL STANDARD FOR INTERVENTION

Minn. Rules, Part 7829.0800, subp. 2 establishes four categories of interveners. The Rule requires the Commission to allow a person to intervene if the fits any of the following four categories:

- Category 1. the person is specifically considered by statute to be interested in the particular type of matter at issue;
- Category 2. the person is specifically declared by statute to be an interested party;
- Category 3. the outcome of the proceeding will bind or affect the person with respect to an interest peculiar to that person, as distinguished from an interest common to the public or other ratepayers in general, or
- Category 4. the person's interests are not adequately represented by one or more other parties participating in the case.

II. COMMISSION ANALYSIS AND ACTION

A. Retiree Association

The Retiree Association argued that it had a right to intervene because the outcome of this proceeding will affect its members with respect to pensions and other benefits received by the retirees. Category 3. The Association stated that the proposed merger agreement provides that the surviving corporation has no obligation to maintain the USWC and Qwest benefit plans as separate plans. The Association asserted that the commingling of these plans would mean that Minnesota USWC ratepayers money would be used for other than USWC employees. The Association asserted that this would be a misuse of ratepayer provided money and would negatively impact its members.

The Association also expressed concern that the surviving corporation would not be adequately constrained to honor commitments made to its members regarding retiree benefits and would misuse the pension fund in the future, diluting the pension fund and thereby negatively affecting the Association members.

In reviewing the concerns expressed by the Association, the Commission finds that approval of the proposed merger will not bind or affect the Association with respect to an interest peculiar to it, as distinguished from an interest common to the public or other ratepayers in general. Misuse of ratepayer money is not a concern unique to the Association or its members. Moreover, allegations about the potential misuse of ratepayer funds appear somewhat speculative at this time, hence too premature to constitute grounds for intervention. And certainly any Order issued by this Commission regarding the proposed merger will not be requiring the surviving company to misuse ratepayer funds or purport to authorize the surviving company to violate any contractual obligations the parties to the merger may have.¹

The Commission is not unsympathetic to the Association's concerns for its members. While finding that the Association has not met the specific criterion for intervener status, the Commission will grant the Association participant status in these proceedings. As a participant, the Association will be allowed to present its views in writing and may argue orally at any hearings before the Commission at which oral argument is permitted so that it can fully express its positions, propose solutions, and respond to arguments of other parties. Further, as a participant the Association is assured that its views will be taken into consideration by the Commission in its determination of this matter.

B. Telecommunications Resellers Association

The Telecommunications Resellers Association (TRA) alleged generally that its members have a direct and substantial interest and may be affected by the matters raised by the merger petition. The TRA also alleged that no other parties to this proceeding can adequately address the concerns of the TRA or provide the unique perspective of its membership. The TRA asserted that denial of its petition to intervene would deprive the Commission of additional industry insight and result in a less than complete record.

The Commission certainly values industry insight and seeks a complete record for its decision in this matter. (See Section C, below.) However, the Commission finds the TRA's general and speculative statements unpersuasive that it meets the intervention criteria set forth in Minn. Rules, Part 7829.0800, subp. 2.

Moreover, based on its petition, it appears that the TRA actually seeks participant status in this matter rather than intervener status. The TRA states that its purpose is to monitor this proceeding and submit comments and briefs, as appropriate. The TRA specifically stated that it did not intend to sponsor witnesses, engage in discovery or cross-examine witnesses. As such, the TRA purpose can be fulfilled as a participant in this proceeding and such status will be granted to it.

¹ Compare the Commission's discussion of speculative concerns raised by GTE-Communication Corporation (GTE-CC) in its petition to intervene in the WorldCom, Inc./MCI Communications Corporation merger. ORDER APPROVING MERGER, Docket No. P-443, 3012/PA-97-1532 (April 9, 1998) at page 10.

In short, denial of TRA's petition to intervene will not deprive the Commission of additional industry insight or result in as less than complete record, as asserted by the TRA. Instead, by granting the TRA participant status the Commission will allow the TRA to do everything it has proposed to do in this matter: to monitor this proceeding and submit comments and briefs, as appropriate, i.e. pursuant to the Commission's established schedule.

C. AT&T, Cady, Covad, McLeod, and Rhythms

As consumers of USWC's (and the merged entity's) services and users of those services to provide competitive service, each of these petitioners has a high level of involvement with and reliance upon the practical operations of USWC and would continue that involvement with and reliance upon the proposed merged entity. This involvement positions them to provide unique information and insights for this proceeding and to assist the Commission in applying the public interest standard to this proposed merger.

The Commission need not proceed to address whether the petitioners qualify as Category 3 interveners,² however, because based on their petitions and information provided at the hearing by the Department and the OAG they qualify under Category 4 which consists of persons whose interests are not adequately represented by one or more other parties participating in the case. Minn. Rules, Part 7829.0800, subp. 2 (4).

In any instance in which Category 4 is asserted as the basis for intervention, a logical question is whether or not the petitioner's interest is adequately represented by the government agencies, the Department and the OAG, who are parties as a matter of right in the proceeding. Minn. Rules, Part 7829.0800, subp. 3. In this case, both government agencies (the Department and the OAG) have stated for the record, USWC's contrary assertions notwithstanding, that they will not be able to adequately represent the interests of these petitioners and welcomed their assistance as interveners in developing a complete record. Likewise, the Commission believes, based on information in their petitions, that each of these petitioners occupies an adequately distinct relationship to each other and to USWC (and the proposed merged entity) so that none of these petitioners can adequately represent the other.

In these circumstances, the Commission will allow these petitions to intervene. The Commission, of course, retains the authority to prevent the petitioners' activity in this docket from becoming unnecessarily burdensome. For example, to the extent that discovery requests become redundant (petitioners asking the same questions or seeking the same data) the Commission can intervene (if the parties cannot work this out satisfactorily) to gate-keep appropriately to assure that all interveners receive proper information in a manner not unduly burdensome to the parties proposing merger.

ORDER

² Category 3 consists of persons who will be bound or affected by the outcome of the proceeding with respect to an interest peculiar to that person, as distinguished from an interest common to the public or other ratepayers in general. Minn. Rules, Part 7829.0800, subp. 2 (3).

1. The petitions to intervene filed by the Northwestern Bell/U S West Retiree Association (Association) and the Telecommunications Resellers Association (TRA) are denied.
2. Both the Association and the TRA are granted participant status in this proceeding.
3. The petitions to intervene filed by AT&T Communications of the Midwest (AT&T), Rhythms Links Inc. (Rhythms), Covad Communications (Covad), Cady Telemanagement, Inc. (Cady), and McLeodUSA (McLeod) as modified by their voluntary waiver of any right they may have to initiate a contested case in this matter are granted.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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